

STATE OF RHODE ISLAND  
BEFORE THE STATE LABOR RELATIONS BOARD

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In the MATTER of

State of Rhode Island, Department of Social and Rehabilitative Services	Employer	:	
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		:	
		:	CASE NO. EE-2089
Rhode Island Social and Rehabilitative Services, Clerical and Technical Workers	Petitioner	:	
		:	
		:	
Rhode Island State Employees Association, Council 22	Intervenor	:	

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D E C I S I O N

and

O R D E R

The above matter came on to be heard on November 26, 1973 on an Objection to an Election held on October 23 and October 24, 1973 concerning employees of the State of Rhode Island employed in the Department of Social and Rehabilitative Services. It appears from the records filed in Case No. EE-2089 that there were 594 ballots deposited in the ballot box on the two days that the election was held and that the result of the election indicated that 368 votes were cast for the Rhode Island State Employees Association, Council 22 and that 210 votes were cast for the Rhode Island Social and Rehabilitative Services, Clerical and Technical Workers, 9 votes were cast for no union, 2 ballots were void and five ballots were challenged. The Petitioner, Rhode Island Social and Rehabilitative Services, Clerical and Technical Workers, in its objection requests that the election be set aside, first, on the ground that the State Labor Relations Board's Rule No. 6 provides that "No electioneering will be allowed on the day of election at the building where the balloting is taking place or within 200 feet of said building." The Petitioner sought to prove that, in fact, electioneering took place on the days of the election and that it

prejudiced the rights of the Petitioner to a fair election. The Petitioner also alleged in Count No. 2 of his objection to election that a certain "flyer" was distributed and mailed to all persons eligible to vote in said election and that this flyer could have prejudiced the rights to a fair election by creating a false impression concerning legal fees that would be incurred with respect to said election.

Consequently, the narrow issue presented before this Board and upon which the case proceeded was whether the election was a valid election.

It appears from the record that an election among the above employees was directed on August 20, 1973 to be held within 90 days and it further appears that, subsequent to this direction of election, the Rhode Island State Labor Relations Board set the dates of October 23 and 24, 1973 for the election to be held.

To substantiate its position, the petitioner presented two witnesses for their testimony.

It presented as its first witness, Mrs. Carolyn Cathers. It appears from the record that Mrs. Cathers was a watcher at the polls at seven specific locations on October 23, 1973 and at 111 Fountain Street on the second day of the election, namely, October 24, 1973. She testified in response to questions from the Petitioner's attorney that she observed a Mr. William Pearson and a Mr. Ben Areson wearing R.I.S.E.A. buttons and checking off a list when she arrived at the Woonsocket office prior to the start of balloting. She further indicated that she knew both of these men to be representatives of the R. I. State Employees Association. However, it is interesting to note that in response to direct questioning on Page 23 of the transcript the following question was asked:

Q Did these gentlemen leave the Woonsocket office prior to the start of balloting?

A I presume they did. We were taken downstairs to the room where the election was to be held, and they inspected the

room, and then they left the building. I stayed inside with the other checkers so I don't know where they were after that.

also indicated that she met these same two gentlemen at each one of the other six offices that she visited on the first day of the election. In each instance, it is clear that she did not observe them in any manner, shape or form of doing anything that would constitute electioneering. The most she could testify as to her observations concerning these two gentlemen was that they would be coming out of a building just as she was arriving at the building. Nothing further was elicited from her concerning these gentlemen nor was anything further elicited from her concerning any other aspect of the charge that had been lodged concerning the fact that electioneering had taken place which could have prejudiced the election.

The transcript is replete with testimony by Mrs. Cathers that indicated she was basing her contention that electioneering had taken place during the election strictly in presumptions and not on anything she had observed. (Underlining our). The responses of Mrs. Cathers to certain questions on cross-examination are quite interesting and we must say very honest and candid.

For example: Se Page 33 of the Transcript:

Q Did you at any time while you were checking view any representative of Council 22 speaking to any of the people that would be voting in that election?

A

Q To the best of your knowledge, as far as your knowledge is concerned, I mean, you saw no one from 22 that was doing any so-called electioneering on your part; you heard nothing; you was nothing outside of the fact that you saw these men emerging from the building

prior to the time of the election upon your arrival:

that's all you viewed?

A Yes.

In addition on page 35 and 36 of the transcript, she was equally candid in response to the following question:

Q For what period of time?

A I went back to the building after it was found out that it was not necessary for me to be at -- I think it was 144 Westminster Street. I went over to 111 Fountain Street, and -- to see by any chance if there was any electioneering going on in that particular building at that particular time. I went back to my desk. I work at 111 Fountain Street. I went back to the cafeteria, and Mr. Olson was sitting there in the cafeteria. I -- for the rest of the morning until such time as Mr. Olson left with one of the stewards from upstairs, when she came in and got him, I sat there and talked with Mr. Olson mainly to prevent him from electioneering. I would presume -- I could truthfully say neither one of us did electioneering in that building that day. One was preventing the others. Let's put it that way.

The Petitioner produced only one other witness and her testimony on Petitioner's first objection to the election added nothing to show that electioneering had taken place.

In short, it is patently clear that the Petitioner failed to sustain his burden of proof on the issue of electioneering. The transcript is completely devoid of legally competent evidence tending to show that electioneering took place.

Consequently, after a careful analysis of all the evidence, we conclude that this evidence does not warrant the invalidating of the election.

Nevertheless, the evidence is equally devoid of any testimony which indicates that the "Splinter-Flyer" did in fact prejudice anyone's vote. Neither Mrs. Cathers nor Mrs. Lawrence indicated it had influenced their vote nor was any other witness presented by the Petitioner to show that the "flyer" had interfered with their freedom of choice.

In fact, Mrs. Lawrence testified that at sometime prior to the election, Mr. Malinou had conducted a meeting with members of the bargaining unit for the express purpose of explaining what in fact his fee arrangement would be so as to offset what he alleged had been misleading ideas created in their minds by the distribution of the "Flyer". Consequently, if in fact a false impression or misrepresentation had been created, (and we do not imply that one had been created) by the distribution of the flyer, not only was there ample time to correct it, but the testimony on pages 43 and 44 indicates that such an attempt was accomplished by such meeting.

We have gone over the evidence carefully and have analyzed the testimony and have observed the witnesses and are constrained to conclude that there is no merit in Petitioner's contention that the election should be set aside and consequently, we herein dismiss all of Petitioner's Objections to the election.

#### FINDINGS OF FACT

1. The employer, the Department of Social and Rehabilitative Services, is a duly constituted department within the government of the State of Rhode Island. Said department qualifies as an employer and has its offices and principal place of business at 600 New London Avenue, Cranston, Rhode Island

2. That the Rhode Island Social and Rehabilitative Services, Clerical and Technical Workers is a labor organization which exists and is constituted for the purpose, in whole or in part of collective bargaining and of dealing with employers in grievances or other mutual aid or protection.

3. That the Rhode Island State Employees Association, Council 22, AFSCME, AFL-CIO is a labor organization which exists and is constituted for the purpose, in whole or in part of collective bargaining and of dealing with employers in grievances or other mutual aid or protection.

4. That an election was held on October 23 and 24, 1973 among certain employees employed in the Department of Social and Rehabilitative Services.

5. That the results of said election resulted in 368 votes being cast for the R. I. State Employees Association, Council 22 and 210 votes being cast for the Rhode Island Social and Rehabilitative Services, Clerical and Technical Workers.

6. That 9 votes were cast for no union, 2 ballots were void and 5 ballots were challenged

7. That electioneering did not take place on the day of the election.

8. That electioneering did not take place within 200 feet of a building where balloting was taking place.

9. That a so-called "Splinter Flyer" was distributed by the R. I. State Employees Association on or about October 12, 1973.

10. That some time prior to the election of October 23 and October 24, Petitioner's attorney Mr. Malinou attended meetings with members of the bargaining unit at which time he explained among other things the basis of his legal fee arrangement with the clerical and technical workers.

11. That he also explained to them the fee arrangement in order to offset misleading ideas created in their minds.

12. That the so-called "Splinter Flyer" did not prejudice the rights of the Petitioner to a fair election.

13. No complaints concerning electioneering were made to the Labor Relations Board by the Petitioner at any time during the election

14. There is no evidence to substantiate that Administrative Rule No. 6 of the State Labor Relations Board was violated.

## CONCLUSIONS OF LAW

That there is nothing in the evidence or in the documents presented to this Board to warrant the setting aside of the election or the invalidating of the election and this being so, all of the Petitioner's Objections to the election are over-ruled dismissed.

O R D E R

- and

### CERTIFICATION OF REPRESENTATIVE

By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island State Labor Relations Act, it is hereby

ORDERED, that the Objections filed by Rhode Island Social and Rehabilitative Services, Clerical and Technical Workers concerning the election conducted on October 23 and October 24, 1973 be, and the same hereby are, over-ruled; and it is hereby

CERTIFIED, that the Rhode Island State Employees Association, Council 22, AFSCME, AFL-CIO has been designated and selected as representative for the purposes of collective bargaining by a majority of all employees within the Department of Social and Rehabilitative Services, excluding the employees of the Division of Veterans Affairs and the employees of the Division of Child Welfare-Children's Center, and excluding professional and supervisory personnel, as well as the Administrative Assistant and Accountant, and pursuant to the pertinent provisions of the Rhode Island State Labor Relations Act, said union is the exclusive representative of all of said employees for the purposes of collective bargaining.

RHODE ISLAND STATE LABOR RELATIONS BOARD

S/ SAMUEL J. AZZINARO  
CHAIRMAN

S/ RAYMOND PETRARCA  
MEMBER

S/ FRANCIS B. BRENNAN  
MEMBER

Entered as Order of  
the Rhode Island State  
Labor Relations Board

DATED: February 8, 1974

BY: S/ ANGELO E. AZZINARO  
ADMINISTRATOR